

IN RE:

Case No.: 01-30953-BKC-SHF  
Chapter 7 Proceeding

ABRAHAM DAVID GOSMAN,

Debtor.

JOSEPH J. LUZINSKI, Trustee in Bankruptcy  
for the estate of Abraham David Gosman,

Plaintiff,

Adv. No.: 03-3228-BKC-SHF-A

vs.

PEABODY & ARNOLD LLP, and  
JOEL REINSTEIN, P.A.,

Defendants.

**Summary**  
**Order entered on March 9, 2007**

The Court previously granted a Motion to Dismiss as to Counts V and VI and denied the Motion to Dismiss as to Counts I, II, III, and IV. Peabody and Arnold, LLP now seek to have this Court reconsider the Motion to Dismiss as to Counts I, III and IV. .

Peabody seeks reconsideration and dismissal as to Count I of the Second Amended Complaint. Peabody predicates its prayer for relief upon recent case law issued by the Eleventh Circuit Court of Appeals in *Official Comm. of Unsecured Creditors of PSA, Inc. v. Edwards*, 437 F.3d 1145, 1149-50 (11th Cir. 2006) regarding the doctrine of *in pari delicto*. Under the principle of *in pari delicto*, a plaintiff who has participated in wrongdoing may not recover damages resulting from the wrongdoing. If a claim by the debtor “would have been subject to the defense of *in pari delicto* at the commencement of the bankruptcy , then the same claim, when asserted by the trustee, is subject to the same affirmative defense.” *Id.* at 1150. The Court is bound by the conclusions of law set forth in *Edwards*. The bankruptcy trustee succeeds to the rights of the debtor and has standing to bring any suit that the debtor could have brought outside of bankruptcy. The trustee’ s standing to bring suit is limited by certain defenses that could have been raised against the debtor, including the equitable defense of *in pari delicto*.

Held: Mr. Gosman, through the trustee, cannot sue Peabody for professional malpractice regarding the subject fraudulent transfers since both parties, Peabody and Mr. Gosman, would be considered to have committed a wrongdoing. As such, the trustee likewise does not possess a cause of action against Peabody.

Held: The Court has reconsidered the argument advanced in connection with Counts III and IV of the Motion for Reconsideration and concludes that these Counts likewise should be dismissed. The Court finds the defense of *in pari delicto* equally applicable to Counts III and IV

The Court **grants** Peabody & Arnold, LLP’s Motion for Reconsideration, and **dismisses** Count I.